

§ 263.9

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party on a matter relevant to an issue in the proceeding, counsel must certify in writing at the time of filing the notice of appearance required by § 263.6(a):

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party and non-party; and

(2) That each such party and non-party waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

[56 FR 38052, Aug. 9, 1991, as amended at 61 FR 20342, May 6, 1996]

§ 263.9 *Ex parte* communications.

(a) *Definition*—(1) *Ex parte communication* means any material oral or written communication relevant to the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) An interested person outside the Board (including such person's counsel); and

(ii) The administrative law judge handling that proceeding, a member of the Board, or a decisional employee.

(2) *Exception*. A request for status of the proceeding does not constitute an *ex parte* communication.

(b) *Prohibition of ex parte communications*. From the time the notice is issued by the Board until the date that the Board issues its final decision pursuant to § 263.40(c):

(1) No interested person outside the Federal Reserve System shall make or knowingly cause to be made an *ex parte* communication to a member of the Board, the administrative law judge, or a decisional employee; and

(2) A member of the Board, administrative law judge, or decisional employee shall not make or knowingly cause to be made to any interested person outside the Federal Reserve System any *ex parte* communication.

(c) *Procedure upon occurrence of ex parte communication*. If an *ex parte* communication is received by the administrative law judge, a member of the Board or any other person identified in paragraph (a) of this section, that person shall cause all such written communications (or, if the communication

is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All other parties to the proceeding shall have an opportunity, within ten days of receipt of service of the *ex parte* communication, to file responses thereto and to recommend any sanctions, in accordance with paragraph (d) of this section, that they believe to be appropriate under the circumstances.

(d) *Sanctions*. Any party or his or her counsel who makes a prohibited *ex parte* communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Board or the administrative law judge including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue which is the subject of the prohibited communication.

(e) *Separation of functions*. Except to the extent required for the disposition of *ex parte* matters as authorized by law, the administrative law judge may not consult a person or party on any matter relevant to the merits of the adjudication, unless on notice and opportunity for all parties to participate. An employee or agent engaged in the performance of investigative or prosecuting functions for the Board in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review of the recommended decision under § 263.40, except as witness or counsel in public proceedings.

[56 FR 38052, Aug. 9, 1991, as amended at 59 FR 65245, Dec. 19, 1994]

§ 263.10 Filing of papers.

(a) *Filing*. Any papers required to be filed, excluding documents produced in response to a discovery request pursuant to §§ 263.25 and 263.26, shall be filed with OFIA, except as otherwise provided.

(b) *Manner of filing*. Unless otherwise specified by the Board or the administrative law judge, filing may be accomplished by:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight